U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13521640

Date: SEP. 10, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director later dismissed the Petitioner's combined motions to reconsider and reopen stating that the motions do not meet the regulatory requirements. On appeal, the Petitioner asserts that the Petitioner is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. Motions

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy, and (2) establish that the previous decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

B. National Interest Waiver

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the

individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The issue on appeal is whether the Director's decision to dismiss the motions was correct. For the reasons discussed below, we conclude that the Director properly dismissed the Petitioner's combined motions to reopen and reconsider.

The Petitioner claimed in his combined motions that the Director's denial of the petition was "heavily based on the lack [of sufficient] evidence showing the national importance of my proposed endeavor." He asserted that "the evidence I submitted as part of my [request for evidence (RFE)] response was robust and clearly demonstrated the national importance of my proposed endeavor." Notably, the Director specifically discussed the deficiencies in the evidence initially provided in support of the *Dhanasar* first prong in his RFE, explaining that while the Petitioner initially submitted a professional plan and statement, the evidence primarily covered information about his past work in the field (not his future plans for the proposed endeavor). The Director noted that it was the Petitioner's responsibility to provide a detailed description of the work he proposes to perform, supported by documentary evidence to establish the national importance of this work, and further indicated that only submitting evidence about an industry or field is generally insufficient to meet the requirements of the first *Dhanasar* prong.[4]

The Petitioner provided additional documentation in response to the Director's RFE, including statements from the Petitioner, opinion letters, and letters of reference from former colleagues and employers, which collectively expound upon the significance of his previous work experience, reiterated general statements about his endeavor, and offered new, but vague commentary about his proposed work activities, such as "[his] long experience and outstanding achievements in the supply chain management, including import and export of biofuels, will be key for U.S. companies to leverage business opportunities in the [e]thanol market in Brazil." The Director denied the petition, in part, determining that the evidence of record was

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.*

inadequate to demonstrate that the prospective impact of his endeavor would rise to the level of national importance.

The Director dismissed the motions, in part, because the Petitioner did not provide any additional evidence with the motions and did not sufficiently identify and describe the new facts to be proved in the reopened proceeding. *See* 8 C.F.R. § 103.5(a)(2). Within the combined motions, the Petitioner principally relied upon the industry reports and articles and the letters of support submitted before the denial of the petition. The Director acknowledged in the motions dismissal notice that this evidence established the substantial merit of his proposed endeavor but reiterated his previous conclusion that the Petitioner did not submit evidence sufficient to show the potential prospective impact of his work on the broader field. The Director further informed the Petitioner that the vague statements within the reference letters such as his endeavor having the "potential to benefit U.S. workers and business," or that his work "could highly benefit U.S. companies in the field," would not suffice without evidence to corroborate the Petitioner's claim that his endeavor would broadly impact the field at a level contemplated by *Dhanasar*. The Director also determined with regard to the motion to reconsider that: (1) the Petitioner had not established that the decision to deny the petition was incorrect based upon the evidence in the record at the time of filing or the evidence submitted in response to the RFE; and, (2) the evidence provided on motion did not meet the requirements for a motion to reconsider as he had not demonstrated that the previous decision was based on an incorrect application of the law, regulation, or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). We agree.

On appeal, the Petitioner indicates that he is providing "new evidence and facts" to establish the national importance of his endeavor, including a revised professional plan and information about a newly defined "logistics optimization project. . . to clarify and provide more details about my endeavor." However, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the Petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the Director's RFE. *Id.* Similarly, he could have submitted this evidence in support of his motion to reopen the Director's decision to deny the petition. 8 C.F.R. § 103.5(a)(2). Under the circumstances, we need not and do not consider the sufficiency of the evidence submitted for the first time on appeal, and therefore, conclude that the Director correctly determined that the Petitioner's motion to reopen does not meet the requirements under 8 C.F.R. § 103.5(a)(2).

On appeal, the Petitioner also points to previously submitted letters of support discussing his knowledge, skills, and work experience, maintaining that they collectively "provide deep analysis of my proposed endeavor and explanation of why it has national importance." However, these letters do not sufficiently explain the national importance of his proposed work under *Dhanasar*'s first prong.[5] For example, the Petitioner provided opinion letters from professors employed at universities in the United States. In each letter, the professor discusses the Petitioner's previous work achievements and puts forth conclusory statements about how the Petitioner's work will be of benefit to the United States should he be employed within the supply chain logistics occupation.

[5] In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010).

For instance, F-T-, professor of industrial engineering at J-, discusses the Petitioner's previous work responsibilities, and asserts that he "clearly meets no fewer than 3 of the accepted criteria to prove extraordinary ability."[6] He generally concludes, among other things, that the Petitioner's "skills set in the fuel industry would certainly benefit the United States to attain the goals of the Department of Energy. . . ." Likewise, V-L-, associate professor of marketing at T-U-, opines that "it is clearly in the national interest of the United States to grant [the Petitioner] a national interest waiver, given his impressive record of achievements in the field of supply chain, logistics, and HSE (health, safety & environment) for [the] fuels and biofuels trading market." Notably, the Petitioner's knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*'s first prong. Importantly, the professors do not sufficiently identify, analyze, or discuss the nature of the specific work the Petitioner will perform within his prospective endeavor in the United States.[7] Therefore, we conclude that the Petitioner's reliance upon the professors' letters is misplaced.

For these reasons, we determine that the opinion letters are not persuasive towards establishing the Petitioner's eligibility under the first *Dhanasar* prong, and the Director correctly determined that the motion to reconsider does not meet the requirements under 8 C.F.R. § 103.5(a)(3). As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* For the sake of brevity, we will not address other deficiencies within the professors' analyses.

The Petitioner also provides redacted copies of our non-precedent decisions, asserting that we made affirmative determinations therein regarding the national importance of other petitioners' endeavors based upon "similar evidence comparing to what I have submitted." Here, the Petitioner has not furnished evidence sufficient to establish that the facts of the instant petition are analogous to those in the unpublished decisions. These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceeding, the issues considered, and applicable law and policy. Therefore, we determine the Petitioner's submission of these unpublished decisions lends little probative value to this matter.

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[6] Professor F-T- appears to conflate the requirements to establish eligibility for the EB-1 classification as an individual of extraordinary ability, with the EB-2 national interest waiver requirements (which is the immigration benefit that the Petitioner seeks to qualify for in the instant petition). *See* section 203(b)(l)(A) of the Act, 8 U.S.C. § 1153(b)(l)(A); *see also* 8 C.F.R. § 204.5(h)(2), (3).

[7] Similarly, the Petitioner provides reference letters from former employers and work colleagues who outline his work accomplishments and make general statements that assert his services would be beneficial to the United States should he immigrate. While the letter writers hold the Petitioner in high regard, the submitted letters do not provide sufficient information regarding the national importance of the specific endeavor that the Petitioner will focus on should this petition be approved. The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990).

In summary, while the Petitioner has established the substantial merit of his proposed endeavor, he has not offered sufficient information and evidence to demonstrate that its prospective impact rises to the level of national importance.[8] For example, in *Dhanasar,* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Dhanasar*, 26 I&N Dec. at 893. Similarly, in this matter, the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his employer, its clients and those with whom he may share his knowledge to impact the U.S. economy or the supply chain logistics field more broadly at a level commensurate with national importance.

The Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient documentation to support his claims regarding any projected U.S. economic impact attributable to his future work, the record does not establish that benefits to the U.S. regional or national economy resulting from the Petitioner's supply chain logistics activities would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.[9]

III. CONCLUSION

The Director properly determined that the Petitioner's combined motions do not meet the requirements under 8 C.F.R. § 103.5(a)(2), (3).

ORDER: The appeal is dismissed.

[8] *Matter of Chawathe*, 25 I&N Dec. at 376.

[9] It is unnecessary to analyze the remaining additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).